

REMARKS

This paper is a Preliminary Amendment in the RCE filed on July 17, 2008. These amendments are also responsive to a Final Rejection of the claims dated January 8, 2008 in the parent application.

Amendments to the Claims

Applicant has amended independent claims 5 and 13 to more specifically recite the structure and performance of the first and second microfiber layers and to clarify the positional relationship between the first, second and third layers. These amendments are supported by the specification. See, e.g., Publication No. US20005/0069672A1 at Paragraph [0016.]

Moreover, applicant has cancelled dependent claims 10 and 16 because the limitations set forth in those claims are already incorporated into the independent claims by the proposed amendments. Applicant has also amended the language of dependent claims 11,12, 17 and 18 to be consistent with the language of the amended independent claims.

Examiner Interview of September 16, 2008

On September 16, 2008, applicant's undersigned representative and Examiner Jenna-Leigh Johnson participated in a telephonic interview. Prior to the interview, applicant had submitted proposed amendments to independent claims 5 and 13. During the interview, applicant pointed out how the proposed amendments to claims 5 and 13 further distinguished the claimed invention over the DeMott et al. and Keck et al. references that had been cited in the Final Office Action in the parent case. The Examiner's Summary of the Interview, on the Continuation Sheet, reflects the Examiner's response to the presentation of these amendments. In sum, the Examiner reported her belief that the proposed amendments overcame the rejections made of record in the parent case, but the Examiner said she could not allow the claims at this time, until she updated the prior art search.

Claim Rejections Section 103 Rejections

1. Demott Combined With Keck

In the parent case, the Examiner had finally rejected claims 5-7 and 10-18 as unpatentable under 35 U.S.C. § 103 over Demott combined with Keck et al. (U.S. Pat. Pub. No. 2003/0106568 A1)(“Keck.”) The Examiner contended that DeMott’s omission of the claimed split microfibers with furrows and channels is cured by Keck’s disclosure of multilobal multicomponent microfibers as set forth specifically in Keck Paragraphs 0029 and 0062. Applicant respectfully traverses this rejection for a third time.

Keck does not disclose split microfibers with furrows and channels on the surface of the microfibers. Moreover, the cited combination of DeMott and Keck is inappropriate because Keck Paragraph 0062 does not include any indication that Keck recognized the advantages in sorption/wicking and cleaning that result from the alleged use of split microfibers with furrows and channels on the surface, nor does the proposed combination account for the functionally significant differences between Keck and DeMott, in that Keck teaches a layer of fibers that is non-woven versus DeMott who employs layers of woven fibers. The final rejection of record evidences picking and choosing elements from the prior art to reconstruct the invention in order to show that it is obvious. Regardless of the obviousness test applied under *Graham v. John Deere*, or *KSR v. Teleflex*, such picking and choosing is not appropriate.

It is also worth repeating that Demott obtains its functionality as an absorbent through the use of surface coatings and washes that are applied to the fabric layer, rather than through the mechanical properties of the fibers themselves and their combination into a layer. The absorbent functionality resulting from these coatings and washes is ephemeral and can leave the fabric without the desired properties. In the present invention, the capillary-drawing functionality is part of the mechanical structure, and is an inherent property of the construct. These features are now part of the claims.

As a result, the combination of Keck and DeMott is not taught by the references themselves, nor is the result obtained in the presently claimed invention predictable from the proposed combination. Applicant’s claims should now be allowed.

Conclusion

In view of the reasons presented above, and the issues discussed during the recent interview, applicant submits that all of the pending claims are in condition for allowance. The claims recite physical structure and function not found in the cited prior art. The split microfibers of the present invention contain surface irregularities not present in DeMott, and which are not provided by the fibers in Keck. Prompt allowance of these claims is respectfully requested.

Respectfully submitted,
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Dated: September 24, 2008

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